

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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ENVIRONMENTAL PROTECTION  
AND INFORMATION CENTER, a  
California nonprofit  
corporation, and  
KLAMATH-SISKIYOU WILDLANDS  
CENTER, an Oregon nonprofit  
corporation,

Plaintiffs,

v.

CASE NO. CIV. S-04-1027 WBS GGH

ORDER RE: MOTION FOR  
ATTORNEYS' FEES

JACK BLACKWELL, in his  
official capacity as Regional  
Forester for the Southwest  
Pacific Region of the United  
States Forest Service,  
MARGARET BOLAND, in her  
official capacity as Forest  
Supervisor for the Klamath  
National Forest, and UNITED  
STATES FOREST SERVICE,

Defendants.

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The parties have stipulated to an agreement regarding  
attorneys' fees and costs in this matter. They now move this  
court for an order approving the stipulations.

On May 26, 2004 plaintiffs Environmental Protection and

1 Information Center (EPIC) and Klamath Siskiyou Wildlands Center  
2 (KS Wild) filed suit to challenge the Forest Service's  
3 development and implementation of the Westpoint Timber Sale.  
4 This court granted in part and denied in part the parties' cross-  
5 motions for summary judgment, holding that defendants violated  
6 the National Environmental Policy Act ("NEPA"), but not the  
7 National Forest Management Act ("NFMA"). (May 5, 2005 Order 27-  
8 28.) Additionally, this court permanently enjoined defendants  
9 from proceeding with the Westpoint project. (*Id.* at 28.) The  
10 parties both appealed, but subsequently moved for voluntary  
11 dismissals pursuant to Federal Rule of Appellate Procedure 42(b).  
12 The Ninth Circuit granted these motions in September, 2005.

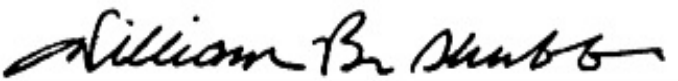
13           Prior to submitting the Stipulated Agreement,  
14 plaintiffs moved on October 7, 2005 for an award of \$80,344.13,  
15 including \$80,155 in attorney fees and \$189.13 in expenses. They  
16 based that motion on the Equal Access to Justice Act ("EAJA"),  
17 which authorizes courts to award attorney fees to prevailing  
18 parties in proceedings for judicial review of agency actions. 28  
19 U.S.C. § 2412(d)(1)(A) ("[A] court shall award to a prevailing  
20 party other than the United States fees and other expenses, in  
21 addition to any costs awarded pursuant to subsection (a),  
22 incurred by that party in . . . proceedings for judicial review  
23 of agency action . . . unless the court finds that the position  
24 of the United States was substantially justified or that special  
25 circumstances make an award unjust."); see also Gonzales v. Free  
26 Speech Coalition, 408 F.3d 613, 618 (9th Cir. 2005) ("The  
27 government bears the burden of demonstrating substantial  
28 justification.").

1 Plaintiffs now agree to accept the stipulated amount,  
2 \$65,491.40, payable to the Law Offices of Sharon E. Duggan, in  
3 lieu of pursuing the previously filed motion for attorneys' fees.  
4 This payment, to be made within thirty (30) business days of the  
5 receipt of this order, "shall operate as a release of any and all  
6 claims of attorneys' fees and costs from Federal Defendants that  
7 Plaintiffs may seek in this matter." (Stipulated Agreement 3 at  
8 ¶ 3.)

9 Because the government bears the burden of showing that  
10 attorneys' fees are unjustified under the EAJA and because it has  
11 agreed to the terms above instead of opposing plaintiffs' motion,  
12 the award of attorneys' fees, as described in the Stipulated  
13 Agreement, is proper. The amount of the award, significantly  
14 reduced from the amount originally sought by plaintiffs, is  
15 reasonable. Moreover, as the parties note in their agreement,  
16 "it is in the interests of judicial economy to avoid litigating a  
17 request for attorneys' fees and costs and to avoid diverting  
18 agency resources from [the] administration of the National Forest  
19 lands at issue in this litigation." (Id. at 2.)

20 IT IS THEREFORE ORDERED that the stipulated agreement  
21 regarding attorneys' fees and costs be and the same hereby is,  
22 APPROVED, and plaintiffs' are hereby awarded their attorneys'  
23 fees and costs in the amount of \$65,491.40.

24 DATED: January 13, 2006

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27 WILLIAM B. SHUBB  
28 UNITED STATES DISTRICT JUDGE